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15

16 UNITED STATES DISTRICT COURT
17 DISTRICT OF NEVADA
18

19 CHINA ENERGY CORPORATION,)
20)
Plaintiff,)
21 vs.)
22 ALAN HILL, et al.,)
23)
Defendants,)
24 ELENA SAMMONS AND MICHAEL)
SAMMONS,)
25 Third-Party Plaintiffs)
vs.)
26 CEDE & CO., THE DEPOSITORY TRUST)
27 COMPANY, AND COR CLEARING, LLC)
28)
Third-Party)
Defendants.)

3:13-CV-562-MMD-VPC

**EMERGENCY MOTION TO
EXTEND TIME FOR THIRD-
PARTY DEFENDANTS CEDE &
CO. AND THE DEPOSITORY
TRUST COMPANY TO FILE A
REPLY TO THIRD-PARTY
PLAINTIFFS' AMENDED
RESPONSE TO MOTION TO
DISMISS AND/OR STRIKE
THIRD-PARTY COMPLAINT**

(Second Request)

1 Third-Party Defendants Cede & Co. ("Cede") and The Depository Trust Company
 2 ("DTC") (together, the "DTC Defendants"), hereby move the Court pursuant to LR 6-1 and LR
 3 7-5 for an order extending the time from April 4, 2014 to April 9, 2014, for DTC Defendants to
 4 file a Reply to Third-Party Plaintiffs' Amended Response to Motion to Dismiss and/or Strike
 5 Third-Party Complaint.¹ DTC Defendants originally filed their Motion to Dismiss and/or Strike
 6 (the "MTD," Dkt. 152) on February 20, 2014.

7 Third-Party Plaintiffs filed a Response to the MTD (the "Response") (Doc. #156) on
 8 February 21, 2014, and the Court set March 3, 2014, as the date for DTC Defendants to file their
 9 Reply to the Response (the "Reply"). Later that same day, the Court entered a Minute Order
 10 (Doc. #157) regarding the requirements of *Klingele v. Eikenberry* and *Rand v. Rowland* as to the
 11 MTD. On February 24, 2014, Third-Party Plaintiffs filed a Motion to Withdraw the Response
 12 (the "Withdrawal Motion") (Doc. #160).

13 Unsure of whether the Court would grant Third-Party Plaintiffs' Withdrawal Motion,
 14 DTC Defendants filed a Reply (Doc. #171) on March 3, 2014. Third-Party Plaintiffs then filed
 15 an Amended Response to the MTD (the "Amended Response") on March 4, 2014. (Doc. # 172).
 16 On March 7, 2014, DTC Defendants and Third-Party Plaintiffs stipulated to extend the time for
 17 DTC Defendants to file a reply to the Amended Response until April 4, 2014, so the Court could
 18 resolve the confusion created by Third-Party Plaintiffs' Withdrawal Motion and Amended
 19 Response at the March 21, 2014 Status Conference. (Doc. #175).

20 At the Status Conference, the Honorable Magistrate Judge Valerie Cooke granted Third-
 21 Party Defendants' Withdrawal Motion, and effectively held that Third-Party Plaintiffs' Amended
 22 Response would act as their operative opposition. (Doc. # 191, 14:23-15:4). The Court further
 23 confirmed that DTC Defendants had until April 4, 2014, to file any supplemental reply. (Id. at
 24 33:1-4).

25 Since the confused briefing schedule was resolved at the Status Conference, DTC
 26 Defendants have been diligently working to prepare a reply to the Amended Response of Third-
 27

28 ¹ DTC Defendants, in submitting this motion, reserve all of their rights, including their rights with respect to the pending MTD on the basis of lack of personal jurisdiction.

1 Party Plaintiffs. In support of their Amended Response, however, Third-Party Plaintiffs
2 provided an affidavit and supporting exhibits containing certain factual allegations relating to
3 DTC Defendants' connections to Nevada that Third-Party Plaintiffs did not previously raise in
4 the original Response, which DTC Defendants are in the process of investigating and
5 determining whether a response is necessary or appropriate, and if so, what that response would
6 be. The client contact for DTC Defendants and lead local counsel are also both out of the
7 country. This has complicated DTC Defendants' ability to investigate these new allegations of
8 Third-Party Plaintiffs and to communicate and, if necessary or appropriate, formulate a response
9 to the same.

10 Under these circumstances, DTC Defendants contacted Third-Party Plaintiffs on April 2,
11 2014, to request a brief five (5) day extension of time until April 9, 2014, to file their reply to
12 Third-Party Plaintiffs' Amended Response. Third-Party Plaintiffs refused. Third-Party
13 Plaintiffs' refusal has now forced DTC Defendants to file this emergency motion seeking an
14 expedited decision on the requested extension of time given the pending April 4, 2014 deadline.
15 Given these facts, DTC Defendants hereby submit that they have demonstrated good cause for

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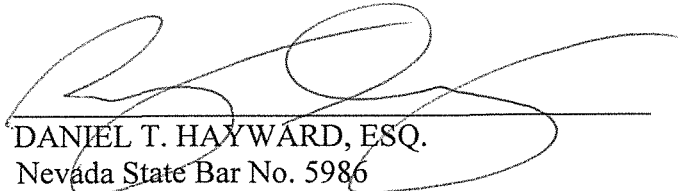
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1 the instant motion and request that the Court grant them until the end of the day on April 9, 2014,
2 to file their reply to Third-Party Plaintiffs' Amended Response.

3 Dated: April 2, 2014.

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Cede & Co. and The Depository Trust Company

1 Plaintiffs' Amended Response to Motion to Dismiss and/or Strike Third-Party Complaint. Mr.
2 Sammons still refused to grant the extension and stated that he would oppose any such motion.

3 9. The office address and telephone numbers for the movant and Third-Party
4 Plaintiffs are as follows:

5 Daniel T. Hayward, Esq. and Ryan W. Leary, Laxalt & Nomura, Ltd., 9600 Gateway
6 Drive, Reno, Nevada 89521, Telephone: (775) 322-1170.

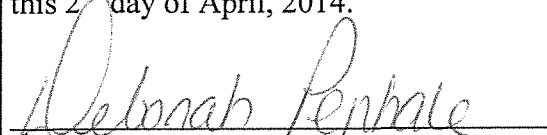
7 Gregg M. Mashberg, Esq. and Lawrence S. Elbaum, Esq., Proskauer Rose LLP, Eleven
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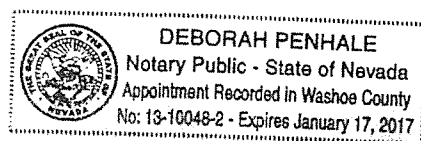
9 Elena Sammons & Michael Sammons, 15706 Seekers Street, San Antonio, Texas 78255,
10 Telephone: (210) 858-6199.

11 DATED this 2nd day of April, 2014.

12
13
14 
RYAN W. LEARY

15 SUBSCRIBED and SWORN to before me
16 this 2nd day of April, 2014.

17 
18 NOTARY PUBLIC



**AFFIDAVIT OF RYAN W. LEARY IN SUPPORT OF EMERGENCY MOTION TO
EXTEND TIME FOR THIRD-PARTY DEFENDANTS CEDE & CO. AND THE
DEPOSITORY TRUST COMPANY TO FILE A REPLY TO THIRD-PARTY
PLAINTIFFS' AMENDED RESPONSE TO MOTION TO DISMISS AND/OR
STRIKE THIRD-PARTY COMPLAINT**

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4 1. On April 4, 2014, Third-Party Defendants Cede & Co and The Depository Trust
5 Company (together, "DTC Defendants") are due to file a reply in support of their Motion to
6 Dismiss and/or Strike ("MTD").

7 2. The purpose of the reply is to address arguments and allegations raised by Third-
8 Party Plaintiffs Michael and Elena Sammons in their Amend Response to the MTD.

9 3. In their Amended Response to the MTD, Third-Party Plaintiffs make certain
10 factual allegations relating to DTC Defendants' contacts with Nevada, which DTC Defendants
11 are currently attempting to investigate in order to determine whether it is necessary and/or
12 appropriate to respond, and if so, what that response would be.

13 4. The client contact for DTC Defendants and lead local counsel are both currently
14 out of the country, which has complicated and delayed DTC Defendants' ability to investigate
15 and determine whether it is necessary and/or appropriate to respond to these new factual
16 allegations of Third-Party Plaintiffs.

17 5. DTC Defendants therefore require additional time to file their reply to the
18 Amended Response of Third-Party Plaintiffs.

19 6. On April 2, 2014, I personally spoke with Third-Party Plaintiff Michael
20 Sammons, explaining the communication difficulties DTC Defendants are having and requested
21 an extension of time until April 9, 2014, for DTC Defendants to file their reply to the Amended
22 Response of Third-Party Plaintiffs.

23 7. Mr. Sammons refused to grant the requested extension.

24 8. Because of the fact approaching deadline, I then explained to Sammons that as a
25 result of his refusal to grant the requested extension, DTC Defendants would be forced to seek
26 the Court's involvement and file an Emergency Motion to Extend Time for Third-Party
27 Defendants Cede & Co. and The Depository Trust Company to File a Reply to Third-Party
28

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this 2nd day of April, 2014, I caused to be served a true and correct copy of the forgoing *Emergency Motion to Extend Time for Third-Party Defendants Cede & Co. and the Depository Trust Company to File a Reply to Third-Party Plaintiffs' Amended Response to Motion to Dismiss and/or Strike Third-Party Complaint* by method indicated

XX by Court's CM/ECF Program

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17 Counsel for Third Party Defendant COR Clearing

18 And by U.S. Mail to Pro Se Parties addressed as follows:

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